



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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## **Bureau of Air and Waste Business Compliance Division**

### **Background Document:**

## **Proposed Changes to Compliance Certification Requirements for Photo Processors, Printers, and Dentists**

**June 23, 2016**

### **Regulations Proposed to be Amended:**

- **310 CMR 7.26, Air Pollution Control Regulations – Industry Performance Standards (Printers)**
- **310 CMR 70.00, Environmental Results Program (ERP) Certification Regulations**
- **310 CMR 71.00, Industrial Wastewater Regulations for Photo Processors and Printers**
- **310 CMR 73.00, Dental Facility Regulations**
- **310 CMR 4.00, Timely Action Schedule and Fee Provisions**

**Statutory Authority: M.G.L. c. 21, §§ 26-53; M.G.L. c. 21A, §§ 2, 8, 113, 16, and 18; M.G.L. c. 21C; M.G.L. c. 21E; M.G.L. c. 21H, §§ 6A-6N; and M.G.L. c. 111, §§ 142A-J and 150A**

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The proposed regulatory changes consist of streamlining procedures and providing corrections to several regulations governing MassDEP's alternative compliance program, the Environmental Results Program (ERP). The ERP program was developed to provide an alternative to MassDEP's permitting system and to provide education for small businesses in industries handling materials that could create significant risks to public health, safety and the environment. The ERP program has been a highly successful, nationally recognized program, where supplemental technical education and partnering with trade associations for dry cleaners, photo processors, printers and dentists has resulted in widespread adoption of best practices for managing hazardous chemicals. With greater experience in environmental compliance among these industries and considering changes in the regulated industries and professions, MassDEP has concluded that some changes to the program would result in decreased regulatory burdens for regulated parties and an enhanced ability of MassDEP compliance and enforcement staff to focus its resources to achieve greater compliance rates over time.

This proposed regulation would simplify certification requirements for some sectors by better tailoring the definitions of businesses and the frequency of certifications in each sector. These changes will also allow MassDEP to better focus its compliance and enforcement resources on the business activities in the sectors that pose the greatest public health and environmental risks. The affected business sectors are photo processors, dentists, and printers. This package would also delete obsolete references in 310 CMR 70.00 to a certification requirement for certain sewer connections. These certification requirements were eliminated in amendments to 314 CMR 7.00 made in April 2014; the references to it in 310 CMR 70.00 were mistakenly not deleted at that time. In addition, amendments to 314 CMR 18.00 will be proposed pursuant to another parallel rule-making notice to eliminate the need for dentists to submit an additional certification for industrial wastewater holding tanks. This brings dentists in line with photo processors and dry cleaners, whose holding tank certification requirements have been consolidated with their certification requirements through 310 CMR 70.00, thereby streamlining paperwork and fee payments.

**Photo Processors**

Proposed regulatory changes affecting photo processors include amendments to 310 CMR 70.00, the general certification requirements for the Environmental Results Program, and to

310 CMR 71.00, Industrial Wastewater for Photo Processors and Printers. These regulations have required photo processors to file annual compliance certifications since 1998. Printers are also required to pay an annual compliance fee. The initial purpose of the Industrial Wastewater regulation was to establish performance standards for photo processors and printers, including setting discharge limits on the amount of silver contained in the industrial wastewater from these facilities, operational and maintenance requirements for silver recovery units, and sampling frequency and analytical parameters for silver sampling. The current definition of photo processors requires approximately 330 facilities to certify annually to the Department.

The photo processing industry has undergone a dramatic reduction in the use of hazardous chemicals over the last ten years, which is a success story for toxics use reduction in the Commonwealth. Much of photo processing has shifted over the last decade from a chemical-based process to digital. The ERP regulations required that chemical-based processors install silver recovery units, or manage their wastewater as hazardous waste. The new digital process relies on computer printing technology and has minimal environmental impacts. To reflect this change in the industry, the proposed amendments include a new definition of photo processor that would exclude from regulation those businesses that conduct only digital processing. This amendment will decrease the number of regulated photo processors from approximately 330 to approximately 25. Currently registered photo processors who conduct only digital photo processing will be allowed to submit a non-applicability certification to the Department which will exempt them from the regulation.

The proposed amendments will also change the frequency of compliance certifications for the remaining photo processors from the current annual certification to a one-time certification upon start-up. MassDEP's analysis of compliance data revealed that, once a chemical photo processor has installed the required silver recovery unit, it is in the facility's best interest to maintain it properly due to the value of the recovered silver. The one-time certification will ensure chemical photo processors understand their environmental obligations and have installed the required silver recovery unit. There will be no fee to file the one-time certification. Eliminating the annual certification will also alleviate the need for follow-up on those facilities that fail to certify, thus freeing up compliance and enforcement staff to conduct outreach, audits and inspections of other ERP facilities to assure compliance.

## **Printers**

Proposed regulatory changes to printers include amendments to 310 CMR 70.00, the general ERP certification requirements, and to 310 CMR 7.26, the Air Pollution Control regulations. These regulations have required all printers to file an annual compliance certification since 1998. Printers also pay an annual compliance fee. The fee is based on the printer's size. Printers include lithographic, graphic arts and screen printers. The primary environmental

concern in the printer sector is the release of volatile organic compounds (VOCs) to the air. The VOCs are contained in the cleanup solution and alcohol used by printers to clean presses or screens. Printers may also have hazardous waste and industrial wastewater impacts.

The proposed amendments include creating a new category of printer called a Very Small Printer (VSP). A VSP is defined in the proposed amendments as those printers that meet all of the following requirements:

- are connected to a municipal sewer,
- generate no more than 55 gallons of hazardous waste per year,
- use no more than 55 gallons of cleanup solution per year, and
- use no more than 55 gallons of alcohol per year.

Analysis of seventeen years of data collected from the printer sector has shown that there is a wide variance in the size and environmental impact of individual printers. The data, together with on-site inspection of dozens of small printers, has demonstrated that small printers have limited potential impact to the environment, in absolute terms and in comparison with larger printers. MassDEP's data analysis has shown that small printers use 1.8% of the cleanup solution and alcohol used by the printer sector as a whole. In addition, from 2013 through 2105, MassDEP conducted 75 printer inspections in support of a printer initiative. Data acquired during these inspections show that 29% of the printers inspected could be classified as VSP. MassDEP anticipates that approximately 210 to 215 of the registered printers will qualify as VSP.

The proposed definition includes requirements for the printer to be connected to municipal sewer and to generate less than 55 gallons of hazardous waste annually to ensure that the potential environmental impact posed by a VSP is limited in its potential to affect groundwater and surface water and air quality. VSPs would be required to file a one-time, rather than an annual, certification and would not pay a corresponding fee. The annual certification requirement and compliance fee were cited during the inspections and during many compliance assistance calls as onerous by many VSPs, some of whom only operate part-time. The elimination of an annual certification requirement for VSPs would reduce the time BAW staff will spend on enforcement follow-up of missing annual submittals and allow staff to use that time for audits, outreach and enforcement of printers.

## **Dentists**

Proposed regulatory changes to dentists include amendments to 310 CMR 73.00, Amalgam Wastewater & Recycling Regulations for Dental Facilities 314 CMR 18.00, Holding Tank regulations, and 310 CMR 73.07, Amalgam Wastewater and Recycling. Since 2006, these regulations have required dentists using mercury amalgam to file a compliance certification

every five years. Dentists have also been required to pay a corresponding fee when their compliance certification was due.

Mercury is a toxic metal. When mercury amalgam is discharged with wastewater, it can end up in sewage sludge. This sludge is subsequently burned in an incinerator or applied to land as a soil amendment; in both cases, rain washes the mercury into lakes, ponds, and streams. People are exposed to mercury primarily through consumption of fish. Even at low levels of exposure, mercury can affect the nervous system. Massachusetts public health officials have issued warnings regarding the consumption of certain types of fish caught in those state water bodies that typically have high concentrations of mercury. Particular cautions have been issued for pregnant women, nursing mothers, women of child-bearing years, and young children. Children and fetuses are particularly vulnerable to mercury, because it can damage their developing brains.

In the ten years MassDEP has regulated dentists that use mercury amalgam, department staff has worked with dentists to dramatically reduce the amount of mercury being introduced into the environment and, conversely, increase the amount of mercury being recycled. In addition, MassDEP has discovered ways to make the program more effective.

The proposed amendments would require dentists to file a compliance certification every two years rather than every five, and would add a statement that dentists who own or operate holding tanks will be asked in their compliance certifications whether they meet the requirements in 314 CMR 18.00. The change in timing will put dentists' environmental compliance certifications on the same timetable as their required registration with the Department of Public Health (DPH), thereby simplifying dentists' compliance obligations. More specifically, the dentists' compliance certifications will be due by March 31 of every even numbered year, the same date by which they must submit registrations to DPH. Making this change requires that MassDEP defer the submittal of certifications by dentists expecting to certify in 2015 to 2016. MassDEP met with the Massachusetts Dental Association in Fall 2014 and they support this change.

The Change from a five year to a two year certification cycle also requires an amendment to the permit fee category for Dental Mercury Amalgam Recycling in 310 CMR 4.00 . The proposed fee amount of \$200 every two years will replace the current fee of \$460 every five years to reflect the new certification schedule.

In addition, a proposed change to 310 CMR 73.07 states that the compliance certification will address whether dentists that own or operate Industrial Wastewater (IWW) holding tanks comply with 314 CMR 18.00. This proposed change is included because a corresponding amendment will be proposed to 314 CMR 18.00 (the IWW Holding Tank Regulations) to exempt

dentists who have holding tanks from filing the one-time certification required by 314 CMR 18.00. MassDEP Bureau of Water Resources expects to propose this corresponding amendment with other revisions of 314 CMR 18.00. The result will be that the certification for IWW Holding Tanks will be consolidated with the dentists' ERP certification, and, thereby, will also exempt them from paying the corresponding annual IWW Holding Tank fee. These proposed amendments will simplify dentists' compliance obligations, requiring them to file one compliance certification and pay one compliance fee. This is similar to the streamlined process for photo processors and dry cleaners for their IWW holding tanks and ERP certifications.

Considering dentists' compliance obligations will be simplified, this proposed change is anticipated to reduce Bureau of Air and Waste's administrative workload by reducing the amount of certification reminders issued to dentists, and the time spent enforcing for failure to certify or for filing late certifications. The two-year certification cycle should also minimize the time spent investigating changes in dental facility ownership and facility location, since fewer of these changes will likely occur between certifications. MassDEP staff will have more time for outreach, audits and enforcement of compliance with the substantive requirements of the regulations for this sector.

#### **Delete References to Compliance Certifications for Certain Sewer Connections**

The other proposed amendments would retract references to 314 CMR 7.00 *Sewer Connections* (specifically 314 CMR 7.05 and 314 CMR 7.17) in 310 CMR 70.00, the ERP Certification Regulations. In April 2014, 314 CMR 7.00 was amended to delete an ERP certification requirement for certain sewer connections. At that time, 310 CMR 70.00 was mistakenly not amended to delete reference to these certification requirements. These proposed amendments will remedy that oversight.

#### **Public Notice and Comment Procedures**

The public comment period for these proposed amendments will be announced on June 23, 2016, with the publication of legal notices in several newspapers of general circulation in the Commonwealth. MassDEP plans to hold six public hearings in accordance with the requirements of M.G.L. c. 30A during the comment period. A copy of the proposed amendments is available for public review on MassDEP's web site at:

<http://www.mass.gov/eea/agencies/massdep/service/regulations/proposed-and-recently-promulgated-regulations.html#2>.

If you have any questions about these amendments, please contact Veronica O'Donnell in MassDEP's Bureau of Air and Waste (email: [veronica.odonnell@state.ma.us](mailto:veronica.odonnell@state.ma.us) or telephone: 617/574-6859).

